

1-1 By: Hinojosa S.B. No. 1451
 1-2 (In the Senate - Filed March 7, 2013; March 18, 2013, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 29, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 0; April 29, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12			X	
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1451 By: Hinojosa

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the prosecution of the offense of money laundering and
 1-20 to the forfeiture of certain contraband.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subdivisions (1) and (2), Article 59.01, Code of
 1-23 Criminal Procedure, are amended to read as follows:

1-24 (1) "Attorney representing the state" means the
 1-25 prosecutor with felony jurisdiction in the county in which a
 1-26 forfeiture proceeding is held under this chapter or, in a
 1-27 proceeding for forfeiture of contraband as defined under
 1-28 Subdivision (2)(B)(v) of this article, the city attorney of a
 1-29 municipality if the property is seized in that municipality by a
 1-30 peace officer employed by that municipality and the governing body
 1-31 of the municipality has approved procedures for the city attorney
 1-32 acting in a forfeiture proceeding. In a proceeding for forfeiture
 1-33 of contraband as defined under Subdivision (2)(B)(vi)
 1-34 [~~(2)(B)(vii)~~] of this article, the term includes the attorney
 1-35 general.

1-36 (2) "Contraband" means property of any nature,
 1-37 including real, personal, tangible, or intangible, that is:

1-38 (A) used in the commission of:

1-39 (i) any first or second degree felony under
 1-40 the Penal Code;

1-41 (ii) any felony under Section 15.031(b),
 1-42 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or
 1-43 35, Penal Code;

1-44 (iii) any felony under The Securities Act
 1-45 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

1-46 (iv) any offense under Chapter 49, Penal
 1-47 Code, that is punishable as a felony of the third degree or state
 1-48 jail felony, if the defendant has been previously convicted three
 1-49 times of an offense under that chapter;

1-50 (B) used or intended to be used in the commission
 1-51 of:

1-52 (i) any felony under Chapter 481, Health
 1-53 and Safety Code (Texas Controlled Substances Act);

1-54 (ii) any felony under Chapter 483, Health
 1-55 and Safety Code;

1-56 (iii) a felony under Chapter 151 [~~153~~],
 1-57 Finance Code;

1-58 (iv) any felony under Chapter 34, Penal
 1-59 Code;

1-60 (v) a Class A misdemeanor under Subchapter

2-1 B, Chapter 365, Health and Safety Code, if the defendant has been
2-2 previously convicted twice of an offense under that subchapter;
2-3 (vi) [~~any felony under Chapter 152, Finance~~
2-4 ~~Code;~~
2-5 [~~vii~~] any felony under Chapter 32, Human
2-6 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
2-7 involves the state Medicaid program;
2-8 (vii) [~~viii~~] a Class B misdemeanor under
2-9 Chapter 522, Business & Commerce Code;
2-10 (viii) [~~ix~~] a Class A misdemeanor under
2-11 Section 306.051, Business & Commerce Code;
2-12 (ix) [~~x~~] any offense under Section 42.10,
2-13 Penal Code;
2-14 (x) [~~xi~~] any offense under Section
2-15 46.06(a)(1) or 46.14, Penal Code;
2-16 (xi) [~~xii~~] any offense under Chapter 71,
2-17 Penal Code; or
2-18 (xii) [~~xiii~~] any offense under Section
2-19 20.05, Penal Code;
2-20 (C) the proceeds gained from the commission of a
2-21 felony listed in Paragraph (A) or (B) of this subdivision, a
2-22 misdemeanor listed in Paragraph (B)(vii), (ix) [~~(B)(viii)~~], (x), or
2-23 (xi) [~~, or (xii)~~] of this subdivision, or a crime of violence;
2-24 (D) acquired with proceeds gained from the
2-25 commission of a felony listed in Paragraph (A) or (B) of this
2-26 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix)
2-27 [~~(B)(viii)~~], (x), or (xi) [~~, or (xii)~~] of this subdivision, or a
2-28 crime of violence;
2-29 (E) used to facilitate or intended to be used to
2-30 facilitate the commission of a felony under Section 15.031 or
2-31 43.25, Penal Code; or
2-32 (F) used to facilitate or intended to be used to
2-33 facilitate the commission of a felony under Section 20A.02 or
2-34 Chapter 43, Penal Code.
2-35 SECTION 2. Article 59.011, Code of Criminal Procedure, is
2-36 amended to read as follows:
2-37 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If
2-38 property described by Article 59.01(2)(B)(ix), (x), or
2-39 [~~59.01(2)(B)(x)~~] (xi) [~~, or (xii)~~] is subject to forfeiture under
2-40 this chapter and Article 18.18, the attorney representing the state
2-41 may proceed under either this chapter or that article.
2-42 SECTION 3. Chapter 59, Code of Criminal Procedure, is
2-43 amended by adding Articles 59.021, 59.022, 59.023, and 59.024 to
2-44 read as follows:
2-45 Art. 59.021. FORFEITURE OF SUBSTITUTE PROPERTY. (a) In
2-46 this article, "substitute property" means property:
2-47 (1) that is not contraband; and
2-48 (2) that is owned by a person who is or was the owner
2-49 of, or has or had an interest in, contraband with an aggregate value
2-50 of \$200,000 or more.
2-51 (b) Substitute property may be seized under authority of a
2-52 search warrant issued under Subsection (c) if property that is
2-53 contraband:
2-54 (1) can no longer be located after the exercise of
2-55 reasonable diligence;
2-56 (2) has been transferred, conveyed, sold to, or
2-57 deposited with a person other than the owner or interest holder;
2-58 (3) is not within the jurisdiction of the court;
2-59 (4) has substantially diminished in value;
2-60 (5) has been commingled with other property and cannot
2-61 be readily distinguished or separated; or
2-62 (6) is proceeds described by Article 59.01(2)(C) and
2-63 was used to acquire other property that is not within the
2-64 jurisdiction of the court.
2-65 (c) A district court may issue a search warrant authorizing
2-66 a peace officer to seize substitute property if the officer submits
2-67 an affidavit that states:
2-68 (1) probable cause for the commission of an offense
2-69 giving rise to forfeiture of contraband;

3-1 (2) a description of the contraband involved and the
 3-2 estimated current fair market value of the substitute property to
 3-3 be seized;
 3-4 (3) the reasons the contraband is unavailable for
 3-5 forfeiture;
 3-6 (4) probable cause to believe that the owner of the
 3-7 substitute property owned or had an interest in contraband with an
 3-8 aggregate value of \$200,000 or more in connection with the
 3-9 commission of an underlying offense giving rise to the forfeiture;
 3-10 and

3-11 (5) that due diligence has been exercised in
 3-12 identifying the minimum amount of substitute property necessary to
 3-13 approximate the estimated highest fair market value of the
 3-14 contraband during the period in which the owner of the substitute
 3-15 property owned, or had an interest in, the contraband.

3-16 (d) After seizure of the substitute property, the
 3-17 disposition shall proceed as other cases in this chapter except
 3-18 that the attorney representing the state must prove by a
 3-19 preponderance of the evidence:

3-20 (1) that the contraband described by Subsection (b)
 3-21 was subject to seizure and forfeiture under this chapter;

3-22 (2) the highest fair market value of that contraband
 3-23 during the period in which the owner of the substitute property
 3-24 owned, or had an interest in, the contraband;

3-25 (3) the fair market value of the substitute property
 3-26 at the time it was seized; and

3-27 (4) that the owner of the substitute property owned or
 3-28 had an interest in contraband with an aggregate value of \$200,000 or
 3-29 more in connection with the commission of an underlying offense
 3-30 giving rise to the forfeiture.

3-31 (e) For purposes of determining the aggregate value of
 3-32 contraband under Subsection (c) or (d), the owner or interest
 3-33 holder is not required to have simultaneously owned or had an
 3-34 interest in all of the property constituting contraband.

3-35 (f) If the fair market value of the substitute property
 3-36 seized exceeds the highest fair market value of the contraband
 3-37 described by Subsection (b) during the period in which the owner of
 3-38 the substitute property owned, or had an interest in, the
 3-39 contraband, the court shall make appropriate orders to ensure that
 3-40 property equal in value to the excess is returned to the person or
 3-41 persons from whom the substitute property was seized.

3-42 Art. 59.022. PROPERTY REMOVED FROM THIS STATE. (a) This
 3-43 article applies to contraband, other than real property, that is
 3-44 determined to be located outside of this state.

3-45 (b) A peace officer who identifies contraband described by
 3-46 Subsection (a) shall provide the attorney representing the state a
 3-47 sworn statement that identifies the contraband and the reasons the
 3-48 contraband is subject to seizure. On receiving the sworn
 3-49 statement, the attorney representing the state may file, in the
 3-50 name of the state, a notice of intended forfeiture in a district
 3-51 court in:

3-52 (1) the county in which the contraband, or proceeds
 3-53 used to acquire the contraband, was known to be situated before its
 3-54 removal out of this state;

3-55 (2) the county in which any owner or possessor of the
 3-56 contraband was prosecuted for an underlying offense for which the
 3-57 property is subject to forfeiture;

3-58 (3) the county in which venue existed for prosecution
 3-59 of an underlying offense for which the property is subject to
 3-60 forfeiture; or

3-61 (4) Travis County.

3-62 (c) The attorney representing the state shall request that
 3-63 citation be served on any person who owns or is in possession or
 3-64 control of the contraband to which this article applies and, on
 3-65 service in accordance with the Texas Rules of Civil Procedure, may
 3-66 move to have the court order that the contraband be:

3-67 (1) returned or brought to the jurisdiction of the
 3-68 court; or

3-69 (2) delivered to an agent of this state for

4-1 transportation to the jurisdiction of the court.

4-2 (d) The attorney representing the state is entitled to all
 4-3 reasonable discovery in accordance with the Texas Rules of Civil
 4-4 Procedure to assist in identifying and locating contraband
 4-5 described by Subsection (a).

4-6 (e) If the court orders the return of contraband under this
 4-7 article, the contraband, after return, is subject to seizure and
 4-8 forfeiture as otherwise provided by this chapter.

4-9 (f) If it is found that any person after being served with a
 4-10 citation under Subsection (c) has transported, concealed, disposed
 4-11 of, or otherwise acted to prevent the seizure and forfeiture of
 4-12 contraband described by Subsection (a), the court may:

4-13 (1) order the payment to the attorney representing the
 4-14 state of costs incurred in investigating and identifying the
 4-15 location of the contraband, including discovery costs, reasonable
 4-16 attorney's fees, expert fees, other professional fees incurred by
 4-17 the attorney, and travel expenses;

4-18 (2) enter a judgment for civil contempt and impose:

4-19 (A) a fine of not more than \$10,000 or less than
 4-20 \$1,000;

4-21 (B) confinement in jail for a term of not more
 4-22 than 30 days or less than 10 days; or

4-23 (C) both fine and confinement;

4-24 (3) enter a judgment of forfeiture of the person's
 4-25 interest in the contraband;

4-26 (4) enter a judgment in the amount of the fair market
 4-27 value of the contraband;

4-28 (5) impose a civil penalty of not more than \$25,000 or
 4-29 less than \$1,000 for each item of contraband, or each separate fund,
 4-30 of which the person transported, concealed, disposed, or otherwise
 4-31 acted to prevent the seizure and forfeiture; or

4-32 (6) order any combination of Subdivisions (1) through
 4-33 (5).

4-34 Art. 59.023. SUIT FOR PROCEEDS. (a) A peace officer who
 4-35 identifies proceeds that are gained from the commission of an
 4-36 offense listed in Article 59.01(2)(A) or (B) shall provide the
 4-37 attorney representing the state with an affidavit that identifies
 4-38 the amount of the proceeds and that states probable cause that the
 4-39 proceeds are contraband subject to forfeiture. On receiving the
 4-40 affidavit, the attorney representing the state may file for a
 4-41 judgment in the amount of the proceeds in a district court in:

4-42 (1) the county in which the proceeds were gained;

4-43 (2) the county in which any owner or possessor of the
 4-44 property was prosecuted for an underlying offense for which the
 4-45 property is subject to forfeiture;

4-46 (3) the county in which venue existed for prosecution
 4-47 of an underlying offense for which the property is subject to
 4-48 forfeiture;

4-49 (4) the county in which the proceeds were seized; or

4-50 (5) Travis County.

4-51 (b) If the court determines that, based on an examination of
 4-52 the affidavit described by Subsection (a), probable cause exists
 4-53 for the suit to proceed, the court shall order that citation be
 4-54 served on all defendants named in the suit in accordance with the
 4-55 Texas Rules of Civil Procedure.

4-56 (c) Each person who is shown to have been a party to an
 4-57 underlying offense for which the proceeds are subject to forfeiture
 4-58 is jointly and severally liable in a suit under this article,
 4-59 regardless of whether the person has been charged for the offense.

4-60 Art. 59.024. MULTIPLE RECOVERY PROHIBITED. The attorney
 4-61 representing the state may proceed under Article 59.02, 59.021,
 4-62 59.022, or 59.023, or any combination of those articles. If
 4-63 property or proceeds are awarded or forfeited to the state under
 4-64 this chapter for an underlying offense, a court may not award or
 4-65 forfeit additional property or proceeds that would exceed the
 4-66 highest fair market value of the contraband subject to forfeiture
 4-67 for that offense. For purposes of this article, the highest fair
 4-68 market value may be calculated at any time during the period in
 4-69 which the applicable person owned, possessed, or had an interest in

5-1 the contraband.

5-2 SECTION 4. Subsection (p), Article 59.06, Code of Criminal
5-3 Procedure, is amended to read as follows:

5-4 (p) Notwithstanding Subsection (a), and to the extent
5-5 necessary to protect the commission's ability to recover amounts
5-6 wrongfully obtained by the owner of the property and associated
5-7 damages and penalties to which the commission may otherwise be
5-8 entitled by law, the attorney representing the state shall transfer
5-9 to the Health and Human Services Commission all forfeited property
5-10 defined as contraband under Article 59.01(2)(B)(vi)
5-11 [~~59.01(2)(B)(vii)~~]. If the forfeited property consists of property
5-12 other than money or negotiable instruments, the attorney
5-13 representing the state may, if approved by the commission, sell the
5-14 property and deliver to the commission the proceeds from the sale,
5-15 minus costs attributable to the sale. The sale must be conducted in
5-16 a manner that is reasonably expected to result in receiving the fair
5-17 market value for the property.

5-18 SECTION 5. Subdivision (4), Section 34.01, Penal Code, is
5-19 amended to read as follows:

5-20 (4) "Proceeds" means funds acquired or derived
5-21 directly or indirectly from, produced through, [~~or~~] realized
5-22 through, or used in the commission of:

- 5-23 (A) an act; or
- 5-24 (B) conduct that constitutes an offense under
5-25 Section 151.7032, Tax Code.

5-26 SECTION 6. (a) The change in law made by this Act to
5-27 Chapter 59, Code of Criminal Procedure, applies only to the
5-28 forfeiture of property in relation to an offense committed on or
5-29 after the effective date of this Act. Forfeiture of property in
5-30 relation to an offense committed before the effective date of this
5-31 Act is governed by the law in effect when the offense was committed,
5-32 and the former law is continued in effect for that purpose.

5-33 (b) The change in law made by this Act to Section 34.01,
5-34 Penal Code, applies only to an offense committed on or after the
5-35 effective date of this Act. An offense committed before the
5-36 effective date of this Act is governed by the law in effect on the
5-37 date the offense was committed, and the former law is continued in
5-38 effect for that purpose.

5-39 (c) For purposes of this section, an offense was committed
5-40 before the effective date of this Act if any element of the offense
5-41 occurred before that date.

5-42 SECTION 7. This Act takes effect September 1, 2013.

5-43 * * * * *